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5 Charles R. Cypher

Charles R. Cypher, Reg. No. 41,694

Date of Deposit: July 30, 2001

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

10 In re patent application of:

Inventor: Peter C. Craig  
Title: Portable Pen for Shipping Livestock by  
Container Ship, Rail and Truck  
15 Examiner: Fred T. French  
Art unit: 3643  
Attorney Docket No.: PLI/ 7

**PRELIMINARY AMENDMENT**

20

Commissioner for Patents  
Washington, D.C. 20231

Sir:

25

**In the Specification:**

Please add the following paragraph at page 1, line 4:

30

This application is a continuation of U.S. application 09/151,992, filed  
September 11, 1998.

Please delete the paragraph beginning at page 6, line 6, and replace it  
with the following paragraph:

35

09/151,992-03001

1 ISO 830:1981 then goes on to distinguish general purpose containers  
from specific purpose containers. At ISO 830:1981 section 4.1.1.1 a  
"general purpose container" is defined as a "[f]reight container, totally  
enclosed and weather-proof, having a rigid roof, rigid side walls, rigid end  
5 walls and a floor, having at least one of its end walls equipped with doors  
and intended to be suitable for the transport of cargo of the greatest possible  
variety." The rectangular platform 2 of the present invention is not a general  
purpose container as defined.

10 Please delete the paragraph beginning at page 6, line 14, and replace it  
with the following paragraph:

15 A "specific purpose container" is considered a "general term applicable  
to all general cargo containers having constructional features either for the  
"specific purpose" of facilitating packing and emptying other than by means  
of doors at one end of the container, or for other specific purposes such as  
ventilation." ISO 830:1981 section 4.1.1.2. The rectangular platform 2 of  
the present invention is a sub-group of specific purpose containers as  
defined.

20 Please delete the paragraph beginning at page 6, line 21, and replace it  
with the following paragraph:

The term "rectangular platform" as used in the claims is considered to  
25 encompass the term "platform based container open sided" as defined in ISO  
830:1981 at section 4.1.1.2.3, except any limitations as to series  
designations should be omitted from the definition of "rectangular platform".  
The term "platform based container open sided" is "applied to any general  
cargo container which does not have rigid side walls or equivalent structures  
30 capable of withstanding all of the loads that may be withstood or transmitted  
by a side wall of a general purpose container and which, for this reason has a  
base structure similar to that of a platform (container). (See 4.1.1.2.4)."  
ISO 830:1981, section 4.1.1.2.3.

35 Please delete the paragraph beginning at page 6, line 31, and replace it  
with the following paragraph:

1

ISO 830: 1981 at section 4.1.1.2.4 defines a "platform (container)" as a "[l]oadable platform having no superstructure whatever but having the same length and width as the base of a container of the same series and  
5 equipped with top and bottom corner fittings, located in the plan view as on containers of series 1, so that some of the same securing and lifting devices can be used."

Please delete the paragraph beginning at page 7, line 1, and replace it  
10 with the following paragraph:

ISO 830:1981 discusses three main sub-types of platform based container open sided. The first is "the platform based container open sided with complete superstructure" which is defined as a "[p]latform-based  
15 container, having a permanently fixed longitudinal load-carrying structure between ends at the top." ISO 830:1981, section 4.1.1.2.3.1. This sub-type is further divided into "those having a rigid roof and rigid end walls (open sided); . . . those having an open top and rigid end walls; . . . [and] those having an open top and open ends (skeletal)." ISO 830:1981, section  
20 4.1.1.2.3.1. The second sub-type are "platform based containers with incomplete superstructure and fixed ends" which are defined as a "[p]latform based container without any permanently fixed longitudinal load-carrying structure between ends other than at the base." ISO 830:1981, section 4.1.1.2.3.2. The third sub-type defined is a "platform based container with  
25 incomplete superstructure and folding ends." This sub-type is defined at ISO 830:1981, section 4.1.1.2.3.3, as a "[p]latform based container with incomplete superstructure (as envisaged in 4.1.1.2.3.2) but having folding end frames with a complete transverse structural connection between corner posts."

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1 In the claims:

Please cancel claims 5, 6, 7 and 8.

Please cancel claims 10, 11 and 12

Please cancel claims 14, 15 and 16.

5 Please cancel claims 18, 19 and 20.

Please cancel claims 22, 23 and 24.

Please cancel claim 29.

Please delete claims 1, 2, 3, 4, 13, 25 and 30 and replace as follows:

10 1. (Once amended) A livestock pen for transporting livestock by rail,  
truck or on a container ship with other standardized freight containers,  
comprising:

15 a. a platform based container open sided, said platform based  
container open sided lacking rigid side walls and having a base similar  
to that of a platform container, said platform based container open  
sided being formed with corner fittings to allow stacking of said  
rectangular platform based container open sided with other said  
standardized freight containers, and said platform based container  
open sided being rectangular in shape; [and]

20 b. a plurality of panels erected on and connected to said platform  
based container open sided, creating an enclosed area on said  
rectangular platform based container open sided for containing  
livestock; and

25 c. an impermeable membrane installed in said enclosed area, said  
impermeable membrane covering said base and extending up said  
panels a selected distance for containing waste produced by said  
livestock.

30 2. (Once amended) A livestock pen for transporting livestock by rail, truck  
or on a container ship with other standardized freight containers, comprising:

35 a. a platform based container open sided, said platform based  
container open sided lacking rigid side walls and having a base similar  
to that of a platform container, said platform based container open  
sided being formed with corner fittings to allow stacking of said  
rectangular platform based container open sided with other said

- 1 standardized freight containers, and said platform based container  
open sided being rectangular in shape;
- 5 b. at least one panel erected on said platform based container open  
sided such that an enclosed area on said platform based container  
open sided for containing livestock exists;
- c. an impermeable membrane installed in said enclosed area, said  
impermeable membrane covering said base and extending up said  
enclosed area a selected distance for containing waste produced by  
said livestock.
- 10 3. (Once amended) The livestock pen of claim 1, wherein:
- a. said platform based container open sided comprises:
1. a base having a top and a bottom,
  2. a perimeter extending around said top of said base,  
15 defined by two side edges and two end edges,
  3. said side edges and said end edges meeting at four  
corners,
  4. said rectangular platform based container open sided  
having four posts of equal height, attached to said base, located  
20 at said four corners and extending from said top of said base,
  5. said posts together with said two side edges and said  
two end edges defining four perimeter planar areas extending  
perpendicular to said base and from said top of said base at said  
perimeter of said base,
  - 25 6. at least one of said perimeter planar areas being open to the  
air during transit of said rectangular platform based container  
open sided; and wherein
- b. at least one of said plurality of panels erected on and connected  
to said rectangular platform based container open sided, creating an  
30 enclosed area on said rectangular platform based container open sided  
for containing livestock, extends across said one of said four perimeter  
planar areas open to said air and extending perpendicular to said base.

4. (Once amended) The livestock pen of claim 2, wherein:

- 35 a. said platform based container open sided comprises:
1. a base having a top and a bottom,

- 1           2.     a perimeter extending around said top of said base,  
defined by two side edges and two end edges,
3.     said side edges and said end edges meeting at four  
corners,
- 5           4.     said rectangular platform based container open sided  
having four posts of equal height, attached to said base, located  
at said four corners and extending from said top of said base,
5.     said posts together with said two side edges and said  
two end edges defining four perimeter planar areas extending
- 10           perpendicular to said base and from said top of said base at said  
perimeter of said base,
6.     at least one of said perimeter planar areas being open to  
the air during transit of said rectangular platform based  
container open sided; and wherein
- 15           b.     said at least one panel erected on said rectangular platform  
based container open sided such that an enclosed area on said  
rectangular platform based container open sided for containing  
livestock exists, extends across said one of said four perimeter planar  
areas open to said air and extending perpendicular to said base.
- 20           13.    (Once amended) The livestock pen of claim 1, wherein:  
one of said panels is formed with a flange hook that anchors said  
panel to said rectangular platform based container open sided.
- 25           25.    (Once amended) The livestock pen of claim 2, wherein said panel  
comprises:
  - a.     a frame having a top and a bottom; and
  - b.     a flange hook mounted to the bottom of said frame that anchors  
said panel to said rectangular platform based container open sided.
- 30           30.    (Once amended) A method of transporting livestock, comprising:
  - a.     erecting an enclosure on a platform based container open sided  
with panels, said platform based container open sided lacking rigid side  
walls and having a base similar to that of a platform container, said
  - 35           platform based container open sided being formed with corner fittings  
to allow stacking of said rectangular platform based container open

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1 sided with other said standardized freight containers, and said platform  
based container open sided being rectangular in shape, said enclosure  
having an impermeable membrane installed in said enclosure, said  
impermeable membrane covering said base and extending up said  
5 enclosure a selected distance for containing waste produced by said  
livestock;

- b. loading livestock into said enclosure;
- c. loading said platform based container with said livestock onto a  
means of transport;
- 10 d. moving said means of transport;
- e. unloading said livestock from said enclosure.

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**1 Marked-up Specification Paragraphs**

The paragraph beginning at page 6, line 6, is shown with changes:

ISO 830:19[9]81 then goes on to distinguish general purpose  
5 containers from specific purpose containers. At ISO 830:19[9]81 section  
4.1.1.1 a "general purpose container" is defined as a "[f]reight container,  
totally enclosed and weather-proof, having a rigid roof, rigid side walls, rigid  
end walls and a floor, having at least one of its end walls equipped with  
10 doors and intended to be suitable for the transport of cargo of the greatest  
possible variety." The rectangular platform 2 of the present invention is not  
a general purpose container as defined.

The paragraph beginning at page 6, line 14, is shown with changes:

15 A "specific purpose container" is considered a "general term applicable  
to all general cargo containers having constructional features either for the  
"specific purpose" of facilitating packing and emptying other than by means  
of doors at one end of the container, or for other specific purposes such as  
ventilation." ISO 830:19[9]81 section 4.1.1.2. The rectangular platform 2 of  
20 the present invention is a sub-group of specific purpose containers as  
defined.

The paragraph beginning at page 6, line 21, is shown with changes:

25 The term "rectangular platform" as used in the claims is considered to  
encompass the term "platform based container open sided" as defined in ISO  
830:19[9]81 at section 4.1.1.2.3, except any limitations as to series  
designations should be omitted from the definition of "rectangular platform".  
The term "platform based container open sided" is "applied to any general  
30 cargo container which does not have rigid side walls or equivalent structures  
capable of withstanding all of the loads that may be withstood or transmitted  
by a side wall of a general purpose container and which, for this reason has a  
base structure similar to that of a platform (container). (See 4.1.1.2.4)."  
ISO 830:19[9]81, section 4.1.1.2.3.

35

The paragraph beginning at page 6, line 31, is shown with changes:



1

ISO 830: 19[9]81 at section 4.1.1.2.4 defines a "platform (container)" as a "[l]oadable platform having no superstructure whatever but having the same length and width as the base of a container of the same series and  
5 equipped with top and bottom corner fittings, located in the plan view as on containers of series 1, so that some of the same securing and lifting devices can be used."

The paragraph beginning at page 7, line 1, is shown with changes:

10

ISO 830:19[9]81 discusses three main sub-types of platform based container open sided. The first is "the platform based container open sided with complete superstructure" which is defined as a "[p]latform-based container, having a permanently fixed longitudinal load-carrying structure  
15 between ends at the top." ISO 830:19[9]81, section 4.1.1.2.3.1. This sub-type is further divided into "those having a rigid roof and rigid end walls (open sided); . . . those having an open top and rigid end walls; . . . [and] those having an open top and open ends (skeletal)." ISO 830:19[9]81, section 4.1.1.2.3.1. The second sub-type are "platform based containers  
20 with incomplete superstructure and fixed ends" which are defined as a "[p]latform based container without any permanently fixed longitudinal load-carrying structure between ends other than at the base." ISO 830:19[9]81, section 4.1.1.2.3.2. The third sub-type defined is a "platform based container with incomplete superstructure and folding ends." This  
25 sub-type is defined at ISO 830:19[9]81, section 4.1.1.2.3.3, as a "[p]latform based container with incomplete superstructure (as envisaged in 4.1.1.2.3.2) but having folding end frames with a complete transverse structural connection between corner posts."

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**1 Marked-up Claims**

1. (Once amended) A livestock pen for transporting livestock by rail, truck or on a container ship with other standardized freight containers, comprising:

a. a platform based container open sided, said platform based container open sided lacking rigid side walls and having a base similar to that of a platform container, said platform based container open sided being formed with corner fittings to allow stacking of said rectangular platform based container open sided with other said standardized freight containers, and said platform based container open sided being rectangular in shape; [and]

b. a plurality of panels erected on and connected to said platform based container open sided, creating an enclosed area on said rectangular platform based container open sided for containing livestock; and

c. an impermeable membrane installed in said enclosed area, said impermeable membrane covering said base and extending up said panels a selected distance for containing waste produced by said livestock.

2. (Once amended) A livestock pen for transporting livestock by rail, truck or on a container ship with other standardized freight containers, comprising:

a. a platform based container open sided, said platform based container open sided lacking rigid side walls and having a base similar to that of a platform container, said platform based container open sided being formed with corner fittings to allow stacking of said rectangular platform based container open sided with other said standardized freight containers, and said platform based container open sided being rectangular in shape; [and]

b. at least one panel erected on said platform based container open sided such that an enclosed area on said platform based container open sided for containing livestock exists; and

c. an impermeable membrane installed in said enclosed area, said impermeable membrane covering said base and extending up said

1 enclosed area a selected distance for containing waste produced by  
said livestock.

3. (Once amended) The livestock pen of claim 1, wherein [A livestock  
 5 pen for transporting livestock by rail, truck or on a container ship with other  
 standardized freight containers, comprising]:

a. said platform based container open sided comprises: [a  
 rectangular platform having]

1. a base having a top and a bottom,

2. a perimeter extending around said top of said base  
 [rectangular platform], defined by two side edges and two end  
 edges,

3. said side edges and said end edges meeting at four  
 corners,

4. said rectangular platform based container open sided  
 having four posts of equal height, attached to said base  
 [rectangular platform], located at said four corners and  
 extending from said top of said base [rectangular platform],

5. said posts together with said two side edges and said  
 two end edges defining four perimeter planar areas extending  
 perpendicular to said base [rectangular platform] and from said  
 top of said base [rectangular platform] at said perimeter of said  
base [rectangular platform],

6. at least one of said perimeter planar areas being open to the  
 air during transit of said rectangular platform based container  
open sided],

7. said rectangular platform being of standardized dimensions,  
 formation and configuration such that said rectangular platform  
 is suitable for transport on said container ship stacked with  
 other said standardized freight containers]; and wherein

b. [a] at least one of said plurality of panels erected on and  
 connected to said rectangular platform based container open sided,  
 creating an enclosed area on said rectangular platform based container  
open sided for containing livestock, extends across said one of said  
four perimeter planar areas open to said air and extending  
perpendicular to said base.

1

4. (Once amended) The livestock pen of claim 2, wherein [A livestock pen for transporting livestock by rail truck, or on container ship with other standardized freight containers, comprising]:

5

a. said platform based container open sided comprises: [a rectangular platform having]

10

1. a base having a top and a bottom,

2. a perimeter extending around said top of said base [rectangular platform], defined by two side edges and two end edges,

3. said side edges and said end edges meeting at four corners,

15

4. said rectangular platform based container open sided having four posts of equal height, attached to said base [rectangular platform], located at said four corners and extending from said top of said base [rectangular platform],

20

5. said posts together with said two side edges and said two end edges defining four perimeter planar areas extending perpendicular to said base [rectangular platform] and from said top of said base [rectangular platform] at said perimeter of said base [rectangular platform],

6. at least one of said perimeter planar areas being open to the air during transit of said rectangular platform based container open sided[,

25

7. said rectangular platform sided being of standardized dimension, formation and configuration such that said rectangular platform is suitable for transport on said container ship stacked with said other standardized freight containers]; and wherein

30

b. said at least one panel erected on said rectangular platform based container open sided such that an enclosed area on said rectangular platform based container open sided for containing livestock exists, extends across said one of said four perimeter planar areas open to said air and extending perpendicular to said base.

35

13. (Once amended) The livestock pen of claim 1, wherein:

1 one of said panels is formed with a flange hook that anchors said  
panel to said rectangular platform based container open sided.

25. (Once amended) The livestock pen of claim 2, wherein said panel

5 comprises [A panel for constructing a livestock pen for transporting livestock  
by rail, truck, or on a container ship, comprising]:

- a. a frame having a top and a bottom; and
- b. a flange hook mounted to the bottom of said frame that anchors  
said panel to said rectangular platform based container open sided.

10 30. (Once amended) A method of transporting livestock, comprising:

- a. erecting an enclosure on a platform based container open sided  
with panels, said platform based container open sided lacking rigid side  
walls and having a base similar to that of a platform container, said  
platform based container open sided being formed with corner fittings  
to allow stacking of said rectangular platform based container open  
sided with other said standardized freight containers, and said platform  
based container open sided being rectangular in shape, said enclosure  
having an impermeable membrane installed in said enclosure, said  
impermeable membrane covering said base and extending up said  
enclosure a selected distance for containing waste produced by said  
livestock;
- b. loading livestock into said enclosure;
- c. loading said platform based container with said livestock onto a  
means of transport;
- d. moving said means of transport;
- e. unloading said livestock from said enclosure.

1

**REMARKS**

By this amendment, claims 1 — 4, 9, 13, 17, 21, 25 — 28 and 30 — 33 are pending in the application. There are now 16 total claims pending in the application. The independent claims are now claims 1, 2 and 30.

5 Applicant hereby requests examination of the application with the preliminary amendments contained herein.

**Changes to the Specification**

10 All of the changes to the specification correct the same typographical error. The reference published by the International Organization of Standardization identified as number 830 was published in 1981, not 1991. The correct listing of this reference appears on page 5, line 30, where it is first mentioned.

**15 Changes to the Claims**

Of the remaining claims in this application, Applicant has made all of the amendments made in the parent application. See Applicant's amendment filed June 8, 2000. These amendments were primarily made to better explain Applicant's use of the term "platform based container open sided."

20 Applicant has also amended the claims in light of the examiner's last office action, dated January 30, 2001, in the parent application of this file

***U.S. Patent 3,386,600, granted to Betjemann***

25 In the last office action, dated January 30, 2001, in the parent application of this file, the examiner rejected claims 1—4 under 35 USC §102(b) as being anticipated by U.S. Patent 3,386,600, granted to Betjemann (Betjemann '600).

30 With respect to claims 1 and 2, the examiner argued that Betjemann '600 taught a platform based container open sided having at least one panel erected thereupon to create an enclosed area or enclosure that was capable of containing livestock.

Applicant has amended claims 1 and 2 to now require that an impermeable membrane be installed in the enclosed area or enclosure and that the impermeable membrane cover the base and extend up the enclosed area a selected distance for containing waste produced by the livestock.

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1 No such impermeable membrane is taught in Betjemann '600,  
especially since Betjemann '600 does not appear to have contemplated the  
transport of livestock.

This impermeable membrane was also claimed in claims 5 -- 9 and is  
5 now more specifically described in the foregoing amendments. Applicant  
would like to note that in the examiner's office action of January 30, 2001,  
it appears that the examiner considered the impermeable membrane to be a  
roof or cover for the entire structure that would protect the cargo being  
transported therein from rain and moisture. See the examiner's office action  
10 at page 5, first paragraph. Applicant's respectfully disagree with this  
interpretation by the examiner. There is no support for such an interpretation  
in the specification, and in fact, such a structure for protecting the livestock  
is only described in the specification at page 19, line 35 through page 20,  
line 5 as mesh or a tarp.

15 No new matter is added by the additional language to claims 1 and 2.  
Support for the changes is found in the specification at page 9, lines 19 - 28  
and page 19, lines 16 - 30 and in the drawings, especially figure 9.

Applicant feels that claims 1 and 2 are now clearly distinguished from  
Betjemann '600, and asks that the examiner allow these claims over  
20 Betjemann '600.

Furthermore, as with claims 1 and 2, since the examiner rejected  
claims 3 and 4 on the basis of Betjemann '600 alone, and Applicant believes  
that Betjemann '600 does not teach the impermeable membrane as now  
required in claims 1 and 2, Applicant believes that claims 3 and 4 should also  
25 be allowed over Betjemann '600.

In the last office action dated January 30, 2001, in the parent  
application of this file, the examiner also rejected claims 5--8 and 30 - 33  
under 35 USC §103(a) as being rendered obvious by U.S. Patent 3,386,600,  
granted to Betjemann (Betjemann '600).

30 Claims 5 though 8 have been canceled from the application, their  
limitations having been incorporated into claims 1 and 2. As discussed  
above with respect to claims 1 and 2, Applicant believes that the examiner  
was mistaken in his interpretation of claims 5 -- 8.

As with claims 1 -- 4 discussed above, Applicant believes that  
35 Betjemann '600 does not teach the impermeable membrane as now required  
in claims 1 and 2. Furthermore, Applicant has amended claim 30 to require

1 an impermeable membrane for containing the waste produced by the  
livestock. Claims 31 -- 33 depend from claim 30, incorporating all of its  
limitations. Applicant believes that claims 30 -- 33 should also be allowed  
over Betjemann '600, since Betjemann '600 teaches no such impermeable  
5 membrane.

*U.S. Patent 3,386,600, granted to Betjemann in combination with other art*

In the last office action dated January 30, 2001, in the parent  
application of this file, the examiner rejected claims 9 -- 12, 13 -- 16, 17 --  
10 24, and 25 -- 28 under 35 USC §103(a) as being rendered obvious by U.S.  
Patent 3,386,600, granted to Betjemann '600 in combination with a plurality  
of other granted patents.

Applicant would like to first note that the examiner never cited any  
prior art in combination with Betjemann '600 that actually taught a platform  
15 based container open sided that was adapted for shipping livestock that used  
an impermeable membrane as now required in claims 1, 2 and 30. Second,  
Betjemann '600, itself, does not contemplate transporting livestock. Third,  
of the references cited by the examiner in combination with Betjemann '600  
that related to standardized shipping, none appear to teach the shipping of  
20 livestock. Finally, of the references cited by the examiner in combination  
with Betjemann '600 that related to containing livestock, none appear to  
indicate that they can be adapted to be used on standardized container ships.

Further, the examiner again rejected claims 13 -- 16 under 35 USC  
§103(a) as being rendered obvious by Betjemann '600 in light of U.S. Patent  
25 4,470,231, granted to Lewis (Lewis '231). The examiner argues that it  
would have been obvious to provide the panels of Betjemann '600 with the  
flange hooks taught by Lewis '231.

Applicant has carefully reviewed Lewis '231. Applicant respectfully  
disagrees that figures 1 through 6 generally show flange hooks. Applicant  
30 believes that the best description of what may be the flange hooks on the  
panels identified by the examiner begins at column 2, line 67 and ends at  
column 3, line 42. The only structures on the panels 38 and 68 that the  
Applicant identifies as being somewhat similar to flange hooks of the present  
claims are the seal flanges 52 and 54. These seal flanges 52 and 54 are not  
35 designed to anchor the panels 28 and 68 to the semi-trailer, but to provide



1 weather tight seals. Thus, Applicant does not believe that Lewis '231 can  
be combined with Betjemann '600 to render the amended claims obvious.

Therefore, Applicant believes that claims 9 -- 28 are also allowable  
over the prior art.

5

**Conclusion**

In view of the above, it is submitted that claims are in condition for  
allowance. Allowance of the claims at an early date is solicited.

The undersigned wishes to state that if the Examiner has questions  
10 about this response, the undersigned would be most happy to try to answer  
them on the telephone.

Respectfully submitted,

By: Charles R. Cypher  
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Reg. No. 41,694

Date: July 30, 2001

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